

STATE OF CALIFORNIA  
**Budget Change Proposal - Cover Sheet**  
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 2100	Department Department of Alcoholic Beverage Control	Priority No. 3
Budget Request Name Trade Enforcement Position		Program 10	Subprogram

Budget Request Description  
 Legislative – SB 796 Sunset Deletion

**Budget Request Summary**

This proposal is to convert one limited term (LT) Agent position to a permanent position (PY) to continue enforcement of activities resulting from AB 636 (Hall, Chapter 329, Statutes of 2013).

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Amended Section 25503.4 of the Business and Professions Code	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, departmental Chief Information Officer must sign.	Department CIO	Date
For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance. <input type="checkbox"/> FSR <input type="checkbox"/> SPR    Project No.    Date:		

If proposal affects another department, does other department concur with proposal?    ☐ Yes    ☒ No  
 Attach comments of affected department, signed and dated by the department director or designee.

Prepared By ADRIANA RUELAS	Date 10/16/15	Reviewed By RANDALL DEEMS	Date 10/16/15
Department Director TIMOTHY GORSUCH	Date 10/16/15	Agency Secretary ANNA M. CABELLERO	Date 10/16/15

Additional Review: ☐ Capital Outlay    ☐ ITCU    ☐ FSCU    ☐ OSAE    ☐ CALSTARS    ☐ Dept. of Technology

BCP Type:    ☐ Policy    ☐ Workload Budget per Government Code 13308.05

PPBA	Original signed by Jeff Carosone	Date submitted to the Legislature 1-7-16
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# BCP Fiscal Detail Sheet

BCP Title: Licensing, Advertising, Contests, and Sweepstakes (SB 796)

DP Name: 2100-003-BCP-DP-2016-GB

## Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	1.0	1.0	1.0	1.0	1.0
<b>Total Positions</b>	<b>0.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>
Salaries and Wages						
Earnings - Permanent	0	79	79	0	0	0
<b>Total Salaries and Wages</b>	<b>\$0</b>	<b>\$79</b>	<b>\$79</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Total Staff Benefits	0	39	39	0	0	0
<b>Total Personal Services</b>	<b>\$0</b>	<b>\$118</b>	<b>\$118</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Operating Expenses and Equipment						
5301 - General Expense	0	2	2	0	0	0
5302 - Printing	0	1	1	0	0	0
5304 - Communications	0	2	2	0	0	0
5306 - Postage	0	1	1	0	0	0
5320 - Travel: In-State	0	2	2	0	0	0
5324 - Facilities Operation	0	1	1	0	0	0
5368 - Non-Capital Asset Purchases - Equipment	0	1	1	0	0	0
<b>Total Operating Expenses and Equipment</b>	<b>\$0</b>	<b>\$10</b>	<b>\$10</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Budget Request</b>	<b>\$0</b>	<b>\$128</b>	<b>\$128</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## Fund Summary

Fund Source - State Operations						
3036 - Alcohol Beverages Control Fund	0	128	128	0	0	0
<b>Total State Operations Expenditures</b>	<b>\$0</b>	<b>\$128</b>	<b>\$128</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Total All Funds</b>	<b>\$0</b>	<b>\$128</b>	<b>\$128</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## Program Summary

Program Funding						
1640019 - Compliance	0	128	128	0	0	0
9900100 - Administration	0	10	10	0	0	0
9900200 - Administration - Distributed	0	-10	-10	0	0	0
<b>Total All Programs</b>	<b>\$0</b>	<b>\$128</b>	<b>\$128</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## Personal Services Details

		Salary Information								
Positions		Min	Mid	Max	<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>
1013 - Agent (Eff. 07-01-2016)					0.0	1.0	1.0	1.0	1.0	1.0
<b>Total Positions</b>					<b>0.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>	<b>1.0</b>
Salaries and Wages		<u>CY</u>	<u>BY</u>	<u>BY+1</u>	<u>BY+2</u>	<u>BY+3</u>	<u>BY+4</u>			
1013 - Agent (Eff. 07-01-2016)		0	79	79	79	79	79	79		
<b>Total Salaries and Wages</b>		<b>\$0</b>	<b>\$79</b>	<b>\$79</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		
Staff Benefits										
5150150 - Dental Insurance		0	2	2	0	0	0	0		
5150350 - Health Insurance		0	16	16	0	0	0	0		
5150600 - Retirement - General		0	20	20	0	0	0	0		
5150900 - Staff Benefits - Other		0	1	1	0	0	0	0		
<b>Total Staff Benefits</b>		<b>\$0</b>	<b>\$39</b>	<b>\$39</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		
<b>Total Personal Services</b>		<b>\$0</b>	<b>\$118</b>	<b>\$118</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>		

### A. Budget Request Summary

SB 796 (Committee on Governmental Organization, Chapter 311, and Statutes of 2015) amends Section 25502.2 of the Business and Professions Code to delete a sunset provision set to expire on January 1, 2016. The sunset provision was previously put in place by AB 2184 (Hall) in 2012. AB 2184 authorized alcoholic beverage suppliers to participate in promotional events held at an off-sale retail licensed location, to provide autographs on bottles or other items to consumers, until January 1, 2016. In 2013, AB 636 (Hall, Chapter 329) authorized, until January 1, 2016, autographs at an *instructional* event for consumers held at a retailer's licensed premise. As a result of the workload resulting from AB 636, the Department of Alcoholic Beverage Control (ABC) received funding for one, two-year limited term Agent position.

The deletion of the January 1, 2016, sunset will make these events and the added authorized autographed bottles, a permanent exception, therefore creating a need to convert the limited-term Agent position to permanent and extend funding for two additional years, at which time, ongoing resource needs will be reevaluated.

### B. Background/History

Existing law establishes ABC and grants it exclusive authority to administer the provisions of the ABC Act in accordance with laws enacted by the Legislature. This involves licensing individuals and businesses for the manufacture, importation, and sale of alcoholic beverages in California. ABC is funded by the ABC Fund whose revenue source is licensing fees established by statute. These fees fund ABC's enforcement and administration of the ABC Act.

Existing tied-house laws comprise a broad statutory scheme that regulates the manufacture, distribution and sale of alcoholic beverages with the goal of prohibiting vertical integration and predatory marketing practices. The policy rationale is to promote the state's interest in an orderly and competitive market and prevent the intemperate and/or irresponsible use of alcoholic beverages.

Current tied-house law allows for licensees to sign autographs at off-sale retail locations under specified conditions, including the stipulation that the consumer is not required to make a purchase at the event. Instructional events however, are held at a retailer's licensed premise and typically includes a meal (generally dinner), to teach consumers how to "pair" or "match" a particular wine with different foods. Tied-house provisions do not allow any gift or free goods to be given to consumers at instructional events, so consumers are required to pay for their meal.

Bottle autographing at these events has presented significant enforcement challenges to ABC, as the law now contains provisions that conflict with tied-house laws governing free goods and services. The differences in the limitations for the existing off-sale signing events and the limitations of the signing events conducted on retail premises continues to cause additional violations. These events have no limit per retailer or manufacturer per year and do not require prior approval from ABC yet staff will need to monitor events, review records and provide all other required enforcement duties.

In addition to conducting tied-house investigations, staff provides technical assistance to ABC personnel, including District, Division and Headquarters staff, industry members, and the general public on matters involving trade practice issues such as tied-house relationships and exceptions, advertising and merchandising of alcoholic beverages, sampling, recordkeeping, importation, and commercial bribery. Staff also provides technical assistance to Department personnel regarding non-retail licensing issues and advises industry members and stakeholders on the types of non-retail licenses issued by ABC, their privileges and restrictions, and the overall licensing process. According to the author's office, this measure was necessary, as it allows winemakers to enhance an already popular marketing tool. Consumers were increasingly asking popular winemakers to autograph bottles at instructional events; however, a change in the law was required to prevent a violation of tied-house laws.

## Analysis of Problem

### Resource History (Dollars in thousands)

Program Budget	2010-11	2011-12	2012-13	2013-14	2014-15
Authorized Expenditures	58,496	57,171	56,156	56,831	58,941
Actual Expenditures	48,137	50,390	55,496	56,011	56,875
Revenues	51,105	52,884	52,694	54,728	56,198
Authorized Positions	460.2	460.2	427.9	427.9	439.9
Filled Positions	400.1	395.0	411.9	401.9	411.9
Vacancies	60.1	65.2	16.0	26.0	28.0

### Workload History

Workload Measure**	PY - 4	PY - 3	PY - 2	PY - 1	2014-15	2015-16*
Number of Complaints Received	-	-	-	-	28	26
Number of Investigations Initiated	-	-	-	-	20	26
Number of Investigations Completed	-	-	-	-	7	2
Number of Accusations Filed	-	-	-	-	4	0

\*Complaints received as of October 15, 2015.

\*\*Prior to the additional Agent position received as a result of AB 636, instructional events were not tracked.

### C. State Level Considerations

ABC is a special-fund agency that generates 100% of its income from licensing fees. ABC augments the General Fund by enforcement fines collected. This proposal does not impact the Administration's current policies, priorities or initiatives, nor does it impact another agency.

This proposal is consistent with ABC's mission – to administer the provisions of the Alcoholic Beverage Control in a manner that fosters and protects the health, safety, welfare and economic well-being of the people of the State. This mission is administered through the Department's core functions of licensing and enforcement.

This proposal will not negatively impact the facility needs of ABC.

### D. Justification

The wine industry has identified instructional dinners as a significant and effective marketing tool that is becoming increasingly popular and utilized frequently to familiarize consumers with their products. The wine industry had become frustrated with the department's lack of resources to investigate their complaints associated with these types of events. Two principal issues were identified as being particularly problematic: 1) there was a large number of events being conducted by licensees not authorized to engage in these activities; and, 2) properly authorized events were being conducted by licensees in a non-compliant manner.

AB 636 authorized 6,341 "authorized licensees" to hold an unlimited number of events per calendar year at over 38,247 active on-sale retail licensed premises. The numbers above reflect the number of events ABC was able to investigate from October 1, 2014 to June 30, 2015. Twenty-eight complaints were received, of which 20 were found viable for further investigation. Of those 20 investigations, 7 were completed, 4 resulted in violations for non-compliance with the law and 13 remain pending. The completed investigations took an average of 38 hours each to complete.

Between July 1, 2015 and October 15, 2015, ABC received 26 complaints, all of which were found viable for further investigation. Two of these investigations were completed with no findings of violation and 24 are pending. The chart below shows the workload hours generated as a result of these investigations.

## Analysis of Problem

Oct 2014 to Oct 2015	Number	Hours to Complete	Total Hours
Completed Investigations	9	38	342
Ongoing Investigations	37	38	1406
			1748

### E. Outcomes and Accountability

The workload reflects the need for a full time permanent Agent position. The number of authorized licensed locations where these events may be held has increased by 5,577. The number of authorized licensees has increased by 635 since these promotional events were authorized in 2012-13. Of the nine investigations completed to date, 4 have been determined to be in violation of the law. This represents a 44% non-compliance rate. ABC believes that the permanent authorization of these events will continue to significantly impact department workload.

The bill defines authorized licensees as the following:

Type		Number
02	Winegrower	5,504
09	Beer and Wine Importer	1,469
27	California Winegrower's Agent	3
	TOTAL	6,976

On-Sale retail licensed locations where these events may be held:

Type		Number
41/42*	On-Sale Beer and Wine	25,539
47/48*	On-Sale General	18,285
	Total	43,824

*\*In the ABC 2013-14 AB 636 BCP ABC did not list all of the authorized licensed on-sale premises as it believed only restaurants would take advantage of the new authorization. Our investigations have shown a significant number of public premises (bars) also participate in these promotional events.*

With the number of eligible licensees and licensed premises continuing to grow, ABC expects complaints to increase as well. The Department notes an increase in the popularity of these events as they have become less restrictive.

### F. Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Increase in Authorized Licensees	6,976	7,324	7,691	8,075	8,479	8,903
Increase in Authorized On-Sale Retail Licensees	43,824	45,138	46,492	47,887	49,324	50,804
Number of Complaints Received	54*	72	83	95	110	126
Number of Investigations Initiated	46*	61	70	81	94	107

## **Analysis of Problem**

*\*Includes actions for FY 2014/15 and through October 15, 2015.*

### **G. Analysis of All Feasible Alternatives**

Option 1 – Convert one limited term agent position to permanent and provide two additional years of funding. In two years, the need for this level of ongoing funding will be reevaluated.

Pros: This will assure ABC's ability to effectively enforce and ensure compliance with this now permanent law.

Cons:

Option 2 – Redirect a vacant Agent position from another unit

Pros:

Cons: This option would further degrade enforcement efforts in other areas. District offices must, at the very least, maintain current staffing levels to adequately address public health and safety issues such as sales to minors, public intoxication, gambling, and drugs.

Option 3 – Absorb the workload

Pros:

Cons: Without a permanent Agent to handle this continuing workload, assignments would have to be terminated without an investigation due to insufficient resources. ABC's current enforcement staff is already stretched to capacity.

### **H. Implementation Plan**

If approved, the agent will become permanent on July 1, 2016 and continue to conduct the investigations generated by this law.

### **I. Supplemental Information**

No new supplemental equipment will be needed because this is an existing position being converted from limited-term to permanent.

### **J. Recommendation**

ABC recommends Option 1- Convert one limited term agent position to permanent and authorize two years of funding to allow ABC to effectively investigate matters related to this law.